

FILED	LODGED
RECEIVED	COPY
OCT - 8 2004	
CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY	DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Equal Employment Opportunity
Commission,

Plaintiff,

v.

Mohawk Entertainment, L.L.C. and
Mohave Entertainment, Inc. d/b/a
Blockbuster Video,

Defendants.

CIV 03 1889 PCT MHM
CONSENT DECREE

The United States Equal Employment Opportunity Commission (the "Commission" or "EEOC") filed this action against Mohawk Entertainment, L.L.C. and Mohave Entertainment, Inc. d/b/a Blockbuster Video (collectively, "Blockbuster" or "Defendants") to enforce Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq. (Title VII) and the Civil Rights Act of 1991, 42 U.S.C. §1981a. In the Complaint, the Commission alleged that Blockbuster discriminated against Jennie Anderson and a class of female employees (collectively, "class members") on the basis of their sex by subjecting them to unlawful sexual harassment. The Commission also alleged Blockbuster retaliated against employees who complained about the sexual harassment, and that as a result of the sexual harassment and retaliation, Ms. Anderson was refused rehired from her employment in violation of Title VII.

The parties do not object to the jurisdiction of the Court over this action and waive their rights to a hearing and the entry of findings of fact and conclusions of law.

27

1 In the interest of resolving this matter, and as a result of having engaged in
2 comprehensive settlement negotiations, the parties have agreed that this action should be
3 resolved finally by entry of this Decree.

4 It is hereby **ORDERED, ADJUDGED AND DECREED:**

5 1. This Decree resolves all claims of the Commission and all class members
6 identified in Attachment A to this Decree against Blockbuster including back pay,
7 compensatory and punitive damages, interest, injunctive relief, attorney's fees and costs
8 arising out of the issues in this lawsuit.

9 **INJUNCTION**

10 2. Blockbuster, and its officers, agents, employees, successors, assigns and all
11 persons in active concert or participation with it, both at the time that this Decree becomes
12 effective and for the duration of this Decree, are permanently enjoined for the duration of the
13 Decree from: (a) sexually harassing any employee or applicant; (b) retaliating against any
14 employee or applicant because he or she: (i) opposes or opposed discriminatory practices
15 made unlawful by Title VII; (ii) files or filed a charge of discrimination or is assisting or has
16 assisted or participated or is participating in the filing of a charge of discrimination; or (iii)
17 assists, assisted, participates or participated in an investigation or proceeding brought under
18 the Federal or State laws prohibiting discrimination or retaliation.

19 **MONETARY RELIEF**

20 3. Defendants shall pay the gross sum of thirty thousand dollars (\$30,000.00), to
21 be distributed to the aggrieved persons listed in Attachment A.. The payment shall be made
22 in two equal installments. The first payment in the amount of \$15,000 shall be made within
23 thirty (30) days of the Decree as set forth in Attachment A. The second installment in the
24 amount of \$15,000 shall be made within twelve (12) months of the entry of the Decree as set
25 forth in Attachment A.

26 4. If Defendants are more than ten days late in making any payment, they shall
27 pay a penalty provision of 5.0% accruing monthly on the delinquent amount. This penalty
28

1 amount shall be equally divided among the class members identified in Exhibit A, and shall
2 be included with the payment of the delinquent principal.

3 5. Defendants shall not condition the receipt of the individual relief on a class
4 member's agreement to: (a) maintain as confidential the terms of this Decree; or (b) waive
5 her right to apply for a position with Blockbuster.

6 6. Defendants shall pay the settlement amounts separately to each class member
7 by check, cashier's check or money order, for which sufficient funds exist, in accordance
8 with paragraphs 3 and 4 of this Decree. Blockbuster's obligation hereunder is not satisfied
9 until each check issued is negotiated for readily available funds. The payments described in
10 paragraphs 3 and 4 of this Decree represent settlement of compensatory damages.
11 Blockbuster shall issue United States Internal Revenue Service Form 1099 to each class
12 member for all such payments for the appropriate year.

13 7. The checks provided for in paragraphs 3 and 4 of this Decree shall be mailed
14 directly by Defendants to each class member at the addresses supplied and as designated by
15 the Commission. Within seven business days of the issuance of the checks, Blockbuster shall
16 submit a copy of each check and any related correspondence to the United States Equal
17 Employment Opportunity Commission, Regional Attorney, 3300 North Central Avenue,
18 Suite 690, Phoenix, Arizona, 85012.

19 OTHER RELIEF

20 8. Blockbuster shall provide Jennie Anderson and the class of women with the
21 written apology letter in English, attached hereto as Attachment B. The apology letter shall
22 be signed and printed on Blockbuster or Mohawk Entertainment letterhead, as appropriate,
23 and signed both by an officer of Defendants.

24 9. Blockbuster shall carry out policies and practices that help assure a work
25 environment free from sexual harassment of its employees and that allow employees to raise
26 concerns or complaints without retaliation about matters made unlawful by Title VII. To
27 assist Blockbuster in its efforts to assure a work environment free of sexual harassment and
28 retaliation, Blockbuster shall take the actions provided in paragraphs 10-17 of this Decree.

DEFENDANT'S CORRECTIVE POLICIES AND PRACTICES

10. Blockbuster shall post, for the duration of this Decree, in a prominent place frequented by its employees at its facilities located in Bullhead City, Arizona, including, both at the time that this Decree becomes effective and for the duration of this Decree, the Notice attached as Attachment C. The Notice shall be the same type, style and size as set forth in Attachment C to this Decree, and the Notice shall be posted so that both pages are visible side-by-side.

11. Blockbuster shall provide training to the employees, supervisors and managers of its facilities in Bullhead City, Arizona on sexual harassment and retaliation, according to the following terms:

A. Blockbuster shall provide consultation and training to its employees, supervisors and managers of its Bullhead City, Arizona facilities for a period of two (2) years from the date of this Decree. During each of the next two (2) years, Defendants' Chief Executive Officer shall issue a statement regarding the severe consequences of sexual harassment and of the failure to investigate and take seriously complaints of unlawful harassment, including the fact that managers and supervisors are evaluated, in part, on their enforcement of Blockbuster's anti-discrimination policies and the handling of discrimination complaints, and that such individuals may be subjected to discipline, up to and including termination, for violation of Blockbuster's sexual harassment policies.

All Blockbuster employees, supervisors and managers employed or having responsibility for its Bullhead City, Arizona facilities shall receive training for the duration of this Decree.

B. All current employees and supervisors shall be trained within thirty (30) days of the entry of the decree. All future employees shall be trained within thirty (30) days of employment by Blockbuster.

C. The training shall include the subjects of what constitutes sexual harassment and retaliation; that sexual harassment and retaliation in the hiring, firing, compensation, assignment or other terms, conditions or privileges of employment violates

1 the law; how to prevent sexual harassment and retaliation; how to provide a work
2 environment free from sexual harassment and retaliation; how to conduct an effective sexual
3 harassment investigation; and to whom and by what means employees may complain if they
4 feel they have been subjected to sexual harassment or retaliation in the workplace.

5 D. For purposes of the decree, Defendants may provide computer-based
6 training consistent with the terms of the decree.

7 12. The Commission may designate Commission representatives to review
8 Defendants' training program.

9 13. Blockbuster shall designate, for the duration of this Consent Decree, person(s)
10 at Blockbuster to receive and forward complaints of discrimination from its employees within
11 the State of Arizona.

12 14. Blockbuster shall maintain written policies concerning sexual harassment and
13 retaliation, that conform with the law. Blockbuster represents that its written policies
14 substantially conform with paragraphs A-K below:

15 A. A strong and clear commitment to a workplace free of sexual
16 harassment;

17 B. A clear and complete definition of sexual harassment with at least five
18 relevant examples, one of which shall include that threatening an employee's job or physical
19 safety for complaining about sexual harassment is a clear violation and will not be tolerated;

20 C. A clear and strong encouragement of persons who believe they have
21 been sexually harassed to come forward and make management aware of the harassment;

22 D. A description of the consequences, up to and including termination, that
23 will be imposed upon violators of the policy;

24 E. A promise of maximum feasible confidentiality for persons who believe
25 that they have been sexually harassed;

26 F. An assurance of non-retaliation for persons who believe they have been
27 sexually harassed, and for witnesses;
28

1 G. That sexual harassment by any person, including management officials,
2 supervisors, co-workers, customers and third parties is prohibited and will not be tolerated;

3 H. The identification of specific individuals, with their telephone numbers,
4 to whom employees who believe that they have been sexually harassed can report the sexual
5 harassment, including a written statement that the employee may report the harassment to
6 designated persons outside of their chain of management. This information will also be
7 posted in a conspicuous place at Blockbuster's facilities in Bullhead City, Arizona;

8 I. That employees are not to discuss sexual conduct and/or sexual jokes
9 while at work;

10 J. That no sexually oriented materials or objects shall be brought on the
11 premises of Blockbuster;

12 K. Assurances that Blockbuster will investigate sexual harassment
13 allegations promptly, fairly, thoroughly and impartially by using appropriate investigators and
14 that appropriate corrective action will be taken by Blockbuster to eradicate the sexual
15 harassment.

16 15. These policies, referred to in paragraph (A)-(K) above, shall be transmitted to
17 employees, supervisors and managers of Blockbuster's Bullhead City, Arizona facilities by
18 an officer of Blockbuster and distributed to each current employee of Blockbuster's
19 Bullhead City, facilities within thirty (30) days of the entry of this Decree. These policies
20 shall be distributed to all new employees of Blockbuster's Bullhead City, Arizona facilities
21 when hired and reissued to each employee once a year for the term of this Decree. The
22 sexual harassment policies also shall be posted in a prominent place frequented by the
23 employees and shall include a phone number for employees to complain and/or ask
24 questions.

25 16. Blockbuster shall promptly and appropriately investigate all complaints of
26 sexual harassment by employees of its Bullhead City, Arizona facility. Where the complaint
27 is substantiated, Blockbuster shall take immediate appropriate corrective action to discipline
28 sexual harassers, and to eradicate the sexual harassment. If Blockbuster determines that a

1 victim of sexual harassment has been denied a tangible employment benefit as a result of the
2 harassment, Blockbuster shall restore the compromised benefit and take such actions as are
3 reasonably necessary to place the employee in the position the employee would have been
4 absent the discrimination or retaliation.

5 17. Blockbuster shall not retain documents related to the investigation in the
6 personnel file of any employee who complains of harassment. All disciplinary actions taken
7 against employees, supervisors and managers of Blockbuster's Bullhead City, Arizona
8 facilities for violation of Blockbuster's sexual harassment policy shall be retained in that
9 employee's personnel file where a violation is found and discipline is imposed.

10 **REPORTING BY DEFENDANT AND ACCESS BY EEOC**

11 18. Blockbuster shall report in writing to the Regional Attorney of the
12 Commission's Phoenix District Office at 3300 N. Central Ave., Suite 690, Phoenix, Arizona
13 85012, beginning six (6) months from the date of the entry of this Decree, and thereafter
14 every six (6) months for the duration of the Decree the following information:

15 A. Any changes, modifications, revocations, or revisions to its policies
16 which concern or affect the subject of sexual harassment or retaliation.

17 B. Confirmation that: (i) the Notice required in paragraph 10 of this
18 Decree was posted and the locations where it was posted, (ii) the policies required in
19 paragraph fourteen (A)-(K) of this Decree were distributed to each current and new employee
20 of Blockbuster's Bullhead City, Arizona facilities, and posted.

21 C. A copy of the policies referred to in paragraph fourteen (A)-(K) of this
22 Decree will be provided with the first report.

23 D. A copy of each apology letter mailed pursuant to paragraph 8 of this
24 Decree will be provided with the first report.

25 19. The Commission shall have the right to enter and inspect Blockbuster's
26 premises located in Bullhead City, Arizona upon ten (10) days written notice to Blockbuster's
27 counsel, to ensure compliance with this Decree and Title VII's prohibition of sexual
28 harassment and retaliation, including inspection of lists of training participants to ensure

1 compliance with the training provisions.

2 **COSTS, DURATION AND PENALTIES FOR NON-COMPLIANCE**

3 20. The parties shall each bear their own costs, and the Commission and
4 Blockbuster shall each bear their own attorneys' fees incurred as a result of this action
5 through the filing of this Decree.

6 21. The duration of this Decree shall be two (2) years from its entry. This Court
7 shall retain jurisdiction over this action for the duration of the Decree, during which the
8 Commission may petition this Court for compliance with this Decree.

9 22. In the event that the Commission believes that Blockbuster has failed to comply
10 with any provision(s) of the Decree, the Commission shall notify Blockbuster in writing of
11 the alleged non-compliance, which notice shall state that it is being given pursuant to this
12 paragraph 22(a) of this Decree and shall be sent by fax and by first-class mail both to the
13 counsel and the corporate officers who sign this Decree on behalf of Blockbuster, using the
14 fax numbers and addresses shown in connection with their signatures below

15 23. Should the Court determine that Blockbuster has not complied with this
16 Decree, appropriate relief may be ordered. This Decree shall expire by its own terms at the
17 end of twenty-four months from the date of entry, without further action by the parties.

18 24. The parties agree to entry of this Decree and judgment subject to final approval
19 by the Court.

20 DATED this 6th day of October, 2004.

21
22
23
24
25 The Honorable Mary H. Murguía
United States District Court Judge
26
27
28

1 APPROVED AND CONSENTED TO:

2
3
4
5
6 
7 Mr. Arvin Bernstein

8 P.O. Box 10553
9 Phoenix, Arizona 85064

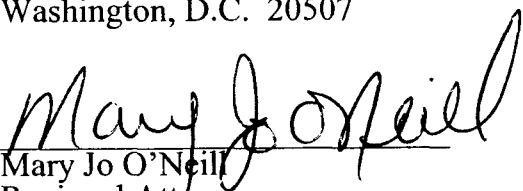
10 Mohawk Entertainment, L.L.C. and
11 Mohave Entertainment, Inc. d/b/a
12 Blockbuster Video


Eric S. Dreiband
General Counsel

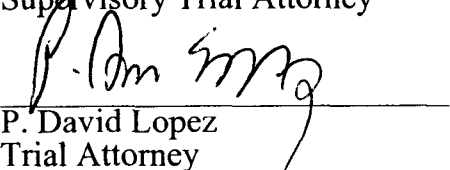
James L. Lee
Deputy General Counsel

Gwendolyn Young Reams
Associate General Counsel

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
1801 L Street, N.W.
Washington, D.C. 20507

13 
14 Mary Jo O'Neill
15 Regional Attorney

16 
17 C. Emanuel Smith
18 Supervisory Trial Attorney

19 
20 P. David Lopez
21 Trial Attorney
22 EQUAL EMPLOYMENT
23 OPPORTUNITY COMMISSION
24 Phoenix District Office
25 3300 N. Central Ave., Suite 690
26 Phoenix, Arizona 85012
27 (602) 640-5016
28

Attorneys for Plaintiff

ATTACHMENT A

CLASS MEMBER NAME	2004 PAYMENT	2005 PAYMENT	TOTAL AMOUNT
Jeni Anderson	\$6,250	\$6,250	\$12,500
Faith Padgett	\$4,000	\$4,000	\$8,000
Risa Talley	\$4,000	\$4,000	\$8,000
Bobbi Vrooman	\$750	\$7,500	\$1,500
TOTALS	\$15,000	\$15,000	\$30,000

ATTACHMENT B

[Blockbuster Letterhead]

[Date]

[address]:

As you are aware, a lawsuit was filed by the Equal Employment Opportunity Commission against Mohawk Entertainment, L.L.C. dba Blockbuster Video alleging sexual harassment and retaliation.

Please accept my regrets on behalf of Mohawk/Blockbuster and its management for any offensive language or conduct you found objectionable during your employment. Please accept my commitment that the company will take the necessary steps to ensure that current and future company employees will work in an environment free of discrimination and harassment.

Sincerely,

Mohawk Entertainment, L.L.C. dba
Blockbuster Video

Arvin Bernstein
President and CEO

ATTACHMENT C

NOTICE TO ALL EMPLOYEES OF MOHAWK ENTERTAINMENT, LLC

This Notice is posted pursuant to a Consent Decree entered into between Mohawk Entertainment, LLC and the Equal Employment Opportunity Commission (EEOC).

It is unlawful under federal law Title VII of the Civil Rights Act and state law to discriminate against an employee on the basis of sex. It is also unlawful to retaliate against any person because the person protested discriminatory practices or contacted the EEOC.

Mohawk Entertainment, LLC will not discriminate against any employee on the basis of sex and will not retaliate against any employee.

Mohawk Entertainment, LLC has a sexual harassment policy and a procedure for making complaints about sexual harassment. Mohawk Entertainment is unable to address any complaints about sexual harassment if the complaints are not brought to its attention. Please report all complaints to:

[ADD]

If you have reservations about reporting the conduct internally, you have the right to seek assistance from:

- (1) EEOC, 3300 North Central Avenue, Suite 690, Phoenix, Arizona 85012; (602) 640-5000;
- (2) Arizona Civil Rights Division (ACRD) of the Attorney General's Office, 1275 W. Washington, Phoenix, Arizona, 85007; (602) 255-5263.

or have the right to file a charge with the EEOC or ACRD if you believe you are being discriminated against.

No Retaliation Clause. No action may be taken against you by any supervisory or management official of Mohawk Entertainment, LLC for (1) opposing discriminatory practices made unlawful by federal law, (2) filing a charge or assisting or participating in the filing of a charge of discrimination, or (3) assisting or participating in an investigation or proceeding brought under Title VII. Should any such retaliatory actions be taken against you, you should immediately contact the EEOC or the ACRD and the address or telephone numbers listed above.

THIS NOTICE MUST REMAIN POSTED UNTIL_____.

Dated:_____ President of Mohawk Entertainment, LLC